IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4959 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HAKIMUDIN SUSAINBHAI KHATUMDI SINCE DECEASED AND HIS HEIRS

Versus

DAHOD NAGARPALIKA

Appearance:

MR RK SAVIANI for MR KV SHELAT for Petitioners

MR DA DESAI FOR MR SK JHAVERI for Respondent

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/12/2001

ORAL JUDGEMENT

#. This is a petition filed by petitioner under Article 226 of the Constitution of India for directions to the respondent-Nagarpalika to fix the pension and to give the amount of pension from 5.3.79 onward to the petitioner by

holding that the petitioner was a permanent servant of the respondent-Nagarpalika, with all consequential benefits occurring to the petitioner as if the respondent-Nagarpalika gave pension to the petitioner with effect from 5.3.79, and for holding the action of the respondent of not giving pension to the petitioner as illegal, malafide, arbitrary and violative of Article 14 of the Constitution of India.

#. It is the case of the petitioner that he was an employee of the respondent-Dahod Nagarpalika since 1954 and he retired from the services on 5.3.79. He gave an application on 22nd May, 1978, to the respondent for a loan from his provident fund but the respondent replied by a letter dated 5.6.78 that the petitioner had joined the pension scheme of the Corporation and hence he was not entitled for provident fund loan and such loan cannot be granted to the petitioner. It is also stated that admittedly, the petitioner has a right to get pension from the Nagarpalika and the Nagarpalika is bound to pay the amount of pension from 5.3.79. The petitioner also filed application No.33/81 before the Controlling Authority under the Payment of Gratuity Act, 1972, for payment of gratuity amount and pension. That application was decided on 17th June, 1981, by the Controlling Authority directing the respondent-Nagarpalika to pay Rs.5,276=22 ps. as gratuity under the Payment of Gratuity Act, 1972. The petitioner moved an application dated 3.6.85 to the Assistant Labour Commissioner, Baroda, for getting pension from the respondent-Nagarpalika from 56.3.79. The Assistant Labour Commissioner, Baroda, forwarded the complaint on 19.6.85 to the Assistant Labour Commissioner, Godhra, for further action. The petitioner also approached the Government Labour Officer, Godhra, and he was replied by a letter stating therein that the application of the petitioner has been filed. The petitioner gave another application dated 3.6.85 for grant of pension by the respondent-Nagarpalika to the Collector, Godhra. The Collector, Godhra, gave a reply on 13.6.85 to the petitioner stating therein that the petitioner's application has been sent to the President of Dahod Nagarpalika for taking necessary action in the matter and the petitioner was directed to approach the Dahod Nagarpalika. Later on, the petitioner received a letter dated 20.3.86 from the Collector, Godhra, informing the petitioner that he is not entitled to get pension as he had resigned from the services of the Nagarpalika on 5.3.79. The petitioner again gave an application on 20.3.86 to get the amount of pension after his retirement from the services of the Nagarpalika on 5.3.79. It is

the case of the petitioner that the respondent is acting in a bureaucratic manner and hence a legal notice dated 16th July 1986 was sent to the respondent-Nagarpalika with a request to give justice to the petitioner by passing appropriate order. He also gave an application to the Collector, Dahod, on 16.7.86 for that purpose. However, when the petitieonr could not get anything from the authority concerned, he approached this Court invoking jurisdiction of this Court under Article 226 of the Constitution by filing this petition.

#. The learned counsel for the respondent-Nagarpalika states that he has filed an affidavit-in-reply of the Chief Officer of the Dahod Nagarpalika in this case. But the affidavit-in-reply filed by the Nagarpalika is not on record of this petition. However, a copy of that reply has been placed on record at the instance of the learned counsel appearing for the respondent. It appears from the affidavit-in-reply filed by the respondent-authority that the petitioner claimed for pensionary benefits on the ground that he retired from the services of the Nagarpalika on 5.3.79. As per the service record, his date of birth is stated to be 24th October, 1927. Hence it is stated that the petitioner could not have superannuated on or about 5.3.79. It is further stated that the petitioner submitted his resignation from services and the same was placed before the Health Committee and the Health Committee, by Resolution No.231 dated 9.3.79, approved the same and accepted the resignation of the petitioner with effect from 9.3.79. A copy of the said Resolution has been annexed with the reply. It is also stated that though the petitioner opted for pensionary scheme in lieu of provident fund scheme, he was not entitled for pensionary benefits. Despite of this, the Controlling Authority, under the provisions of the Payment of Gratuity Act, 1972, held that the petitioner is entitled for payment of gratuity and the payment was directed to be made in accordance with said provisions of the Act. The Nagarpalika accepted the said decision and made payment to the petitioner. It is not in dispute that the petitioner joined the services on 19.5.54 but the petitioner is disputing that he has given any resignation letter and he is claiming that he retired on 5.3.79. As the petitioner has resigned from the services, he is not entitled to get pensionary benefits. For the first time, the petitioner has averred in the petition that he has not resigned and he was discharged from the services. In respect of that allegation, the petitioner sent a notice to the respondent-authority raising false allegations with ulterior motive. Under the provisions of Rule 250 of the

Bombay Civil Service Rules, 1959, (hereinafter referred to as `BCSR') resignation from services constitutes interruption of service and that entails cancellation of all duty counting for pension. Therefore, it is prayed in the reply that the petitioner is not entitled for pensionary benefits and the petition deserves to be dismissed.

#. I have heard the learned counsel for the parties and perused the relevant papers on record. It appears that the petitioner joined the services of the Nagarpalika on 19th May, 1954. The petitioner's date of birth is 24th October, 1927. The petitioner has not agitated before the Controlling Authority that he has not resigned but retired from the services. For the first time, he raised a plea before this court in this petition that he has not resigned but he retired from the services of the Nagarpalika on 5.3.79. Under the provisions of Rule 250 of the BCSR, the following constitute an interruption of service:

(i) Resignation of Government service

(ii) Removal from Government service

(iii) Absence from duty otherwise than on authorized leave unless the absence follows immediated upon authorized leave and no other Government servant is appointed substantively to the post on which the absentee holds a lien, or on suspension immediately followed by reinstatement.

It further provides that unless Government in any case otherwise, direct an interruption of service shall entail cancellation of all duty counting for pension. In certain exceptional cases, order for condoning interruption in service can be made and in certain cases that order is also not required. Under the exception carved out in this section, in certain cases, orders condoning interruption in service are not necessary for the grant of pension in the case of (i) a Government servant who is removed from service and (ii) a Government servant who dies while under suspension or is removed/ retired or is permitted to retire at the end of suspension. Below this Rule, four notes have also been provided. The first note says that upon such conditions as it may think fit in each case to impose, the authority competent to fill the appointment held by a Government servant at the time condonation is applied for, where he to vacate that appointment, may condone all interruptions in his service rendered under this Government including

an interruption between Government servant's non pensionable service and his subsequent pensionable service in order to make the former service pensionable under clause (1) or (2) of Bombay Civil Services Rule 240 or under Bombay Civil Services Rule 240-A as the case may be. Second note provides that usually condonations of interruptions should not be allowed under the above note unless there are sound reasons for doing so for instance whether the Government servant had good reasons for resigning his appointment in the first instance, or if he was compelled by reason beyond his control (for example through illness) to quit service before due time and it is therefore, considered fit to permit him to count certain past pensionable service for pension. The third note lays down that Heads of Departments may condone not more than three interruptions of total period not exceeding three months in all in each case in respect of non-Gazetted Government servant under their control. The last note says that the provision of this rule shall not apply to a Government servant retiring on or after 1st April, 1966, and to whom the Revised Pension Rules, 1950, are applicable, provided that the Government servant who is reappointed to Government service after resignation of his own accord or after removal from Government service, the service rendered by him prior to the date of resignation or removal shall not count for pension or Death cum Retirement Gratuity unless specific entries are made in his book.

#. Thus, from the provisions of Rule 250 of BSCR, exception and notes, it appears that the competent authority is empowered to condone interruption of service, if any. The petitioner has not moved any representation before the authority concerned to condone interruption by way of resignation. Hence, the petitioner is at liberty to move a representation before the competent authority for condonation of interruption, if any, if it is held that the petitioner has not retired but has resigned from services. In the facts and circumstances of the present case, it is desirable that this petition is disposed of in terms that the petitioner is at liberty to move a representation to the competent authority within a period of six weeks from today, for condonation of interruption in service, in case the petitioner's alleged resignation amounts to interruption under the provisions of Rule 250 of BSCR. In case the petitioner files a representation before the competent authority for condonation of interruption, the authority is directed to decide such representation of the petitioner within a period of three months from the date of receipt of such representation. It is made clear that

the competent authority shall decide the representation of the petitioner, if any filed, in accordance with law, by passing a speaking order, and after giving opportunity of hearing to the parties concerned. In case the authority comes to conclusion that the petitioner has resigned and has not retired from the services, then the authority will consider condonation of interruption in service which occurred due to resignation of the petitioner in view of the fact that the petitioner joined the services in the year 1954 and he continued in service for a long time, i.e. till 5.3.79. With these observations and directions, this petition is disposed of. Rule is discharged. No order as to costs.

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(sunil)